

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TERELL VIERA,

Plaintiff,

v.

M. SHEAHAN, B. CARMACK, C.O.  
DYLAN CAPORICCIO, and J. ROGERS,

Defendants.

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**DECISION AND ORDER**

6:17-CV-06844 EAW

On January 25, 2019, this case was referred for all pretrial matters except dispositive motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636. (Dkt. 14). On June 21, 2019, Plaintiff Terell Viera (“Plaintiff”) filed a motion to amend his Complaint. (Dkt. 22). Defendants did not oppose the motion. (Dkt. 26). On August 8, 2019, Judge Payson entered a Report and Recommendation recommending that Plaintiff’s motion be granted in part and denied in part. (Dkt. 27).

Pursuant to Federal Rule of Civil Procedure 72(b)(2) and 28 U.S.C. § 636(b)(1), the parties had 14 days after being served a copy of the Report and Recommendation to file objections. No objections were timely filed. However, on October 3, 2019, Plaintiff filed a motion for an extension of time to file objections. (Dkt. 32). The Court granted this

motion, and Plaintiff was given until November 1, 2019, to file his objections. (Dkt. 33). Plaintiff did not file any objections by that deadline.<sup>1</sup>

The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. See *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”).


Notwithstanding the lack of objections, the Court has conducted a careful review of the Report and Recommendation and finds no error therein. Accordingly, the Court adopts the Report and Recommendation in its entirety. For the reasons set forth in the Report and Recommendation (Dkt. 27), Plaintiff’s motion to amend (Dkt. 22) is granted in part and denied in part. In particular, Plaintiff is granted permission to: add the newly-named defendants with the exception of A. Lowe; remove defendant Carmack and dismiss Plaintiff’s claims against him; and modify the factual assertions of the Complaint, except that he is not permitted to include paragraphs 20, 27, 28, and 34 or the first clauses of the first sentences of paragraphs 17 and 25 of the proposed amended complaint. (See Dkt. 27 at 7).

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<sup>1</sup> Plaintiff did send a letter to the Court dated October 28, 2019, requesting an extension of time to file “opposition to defendants move for summary judgment [sic].” (Dkt. 34). No motion for summary judgment has been filed in this case, and so the Court cannot grant Plaintiff’s request for an extension of his time to oppose such a motion. To the extent Plaintiff was attempting to request an additional extension of time to file objections, the Court informed him in the Text Order granting his initial request that “NO FURTHER EXTENSIONS WILL BE GRANTED.” (Dkt. 33 (emphasis in original)).

Plaintiff shall file an amended complaint in accordance with the Report and Recommendation and this Decision and Order **by no later than December 16, 2019.**

SO ORDERED.



ELIZABETH A. WOLFORD  
United States District Judge

Dated: November 15, 2019  
Rochester, New York